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5 FEBRUARY 2020

Length of Unblemished Service Not Mitigating Factor

Mohd Shahrom bin Mohd Sidek & Anor v CIMB Bank Berhad & Anor
(Court of Appeal Civil Appeal No W-01(A)-498-08/2018)

On 21 January 2020, the Court of Appeal unanimously dismissed an appeal by two former senior officers of the Bank premised on the grounds that their dismissals were disproportionate to their misconduct.

The appellants, a Customer Service Officer and a Branch Manager who had served for 32 and 34 years, respectively, were dismissed for breaching the Bank's Customer Service Policy and Human Resource Policy when they:

- (a) Committed the Bank to honour a cheque (**Cheque**) in the sum of USD3 million notwithstanding the irregularities in the Cheque and the financial position of its issuer, Sysbot Resource Sdn Bhd (**Customer**);
- (b) Failed to verify the authenticity and the genuineness of the information provided to them in relation to the financial status of the Customer prior to signing a Confirmation Letter to the People's Bank, Sri Lanka (**People's Bank**); and
- (c) Failed to obtain the necessary verification and/or approval from the Bank's relevant management and/or Business Units prior to signing the Confirmation Letter when it involved a large monetary value.

Both appellants had admitted to endorsing the Cheque and signing the Confirmation Letter even though they were aware that the Cheque was invalid due to the alteration made on the currency, i.e. from "RM" to "USD". In fact, despite receiving messages from SWIFT (a vast messaging network used by banks) requesting the authentication of the appellants' endorsement behind the Cheque from the People's Bank, the appellants did not take any initiative to reply to the messages. In defence, the appellants argued that their gross misconduct were merely "procedural or administrative oversight" which do not warrant the punishment of dismissal.

The Industrial Court, upon its consideration of all the relevant facts, evidence and principles of industrial jurisprudence, held that both the appellants had been dismissed with just cause and excuse as they

had breached their fiduciary duties to the Bank by failing to exercise reasonable care and diligence and act in the best interest of the Bank.

It was the appellants' position that the Industrial Court had failed to consider their long years of unblemished service with the Bank and that there was no fraud or loss of reputation or any financial losses caused to the Bank by their "procedural or administrative oversight".

The High Court went on to reaffirm the Industrial Court's decision and held, among other things, that in considering whether the punishment meted out to the appellants were harsh or excessive, the court must take the position that honesty and integrity are the key characteristics, especially in the banking industry where the banks are entrusted with the care of public funds.

The Court of Appeal upheld both the High Court and the Industrial Court decisions and agreed that while the appellants had been dismissed for a single act, the gravity of their misconduct that could not be negated by their length of unblemished service or excuse of oversight warranted the punishment of dismissal.

The High Court's grounds of decision may be viewed [here](#).

The Bank was represented by partners Dato' Thavalingam Thavarajah and Shariffullah Majeed and associate Arissa Ahrom of [Lee Hishammuddin Allen & Gledhill](#).

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Published by the Employment Practice

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